

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 100

May 1, 1996, 4:31 p.m.
Page S-4492 Temp. Record

ILLEGAL IMMIGRATION/Asylum Claims by Illegal Immigrants

SUBJECT: Immigration Control and Financial Responsibility Act of 1996 . . . S. 1664. Leahy amendment No. 3780 to the Dole (for Simpson) amendment No. 3743.

ACTION: AMENDMENT AGREED TO, 51-49

SYNOPSIS: As reported, S. 1664, the Immigration Control and Financial Responsibility Act of 1996, will address the issue of illegal immigration: by increasing the number of Border Patrol and investigative personnel; by establishing pilot programs to improve the system used by employers to verify citizenship or work-authorized alien status; by increasing penalties for alien smuggling and document fraud; by reforming asylum, exclusion, and deportation laws and procedures; and by reducing the use of welfare by aliens.

The Dole (for Simpson) perfecting amendment to the bill would strike all after the first word and would insert the text of the bill, as amended, with one technical change.

The Leahy amendment would strike provisions in the bill that will allow an alien to be excluded at a port of entry into the United States for presenting fraudulent documents for entry or for failing to present documents for entry. Under this bill, if such an alien asserts that he or she is seeking asylum, he or she will be referred to a specially trained asylee officer to determine if there is substantial likelihood that grounds for granting asylum exist. Review of a decision to exclude an alien will be limited to habeas corpus determinations of whether this new exclusion authority was used and to consider claims of citizenship and permanent residence status. If it is found that this authority has not been used, or if a preponderance of the evidence shows that an alien has permanent residence status, the relief that will be available will be limited to requiring that the alien be given a full exclusionary hearing. The Leahy amendment would also strike provisions that will allow the Attorney General to exclude aliens at ports of entry if the Attorney General determines that they are part of an "extraordinary migration" that substantially exceeds, or will substantially exceed, the inspection and examination capacities of the Immigration and Naturalization Service (INS). The Leahy amendment would enact alternate provisions on extraordinary migrations. The Attorney General would be allowed to exclude aliens and to deport aliens without referring them to a special inquiry officer if those aliens arrived, or were about to arrive, with other aliens in an extraordinary

(See other side)

YEAS (51)			NAYS (49)			NOT VOTING (0)	
Republicans (12 or 23%)	Democrats (39 or 83%)		Republicans (41 or 77%)	Democrats (8 or 17%)		Republicans (0)	Democrats (0)
Abraham	Akaka	Kennedy	Ashcroft	Inhofe	Bryan	EXPLANATION OF ABSENCE: 1—Official Business 2—Necessarily Absent 3—Illness 4—Other SYMBOLS: AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	
Bennett	Baucus	Kerry	Bond	Kassebaum	Conrad		
Campbell	Biden	Kohl	Brown	Kempthorne	Dorgan		
Chafee	Bingaman	Lautenberg	Burns	Kyl	Exon		
DeWine	Boxer	Leahy	Coats	Lott	Hollings		
Frist	Bradley	Levin	Cochran	McCain	Johnston		
Hatch	Breaux	Lieberman	Cohen	McConnell	Kerrey		
Hatfield	Bumpers	Mikulski	Coverdell	Murkowski	Reid		
Jeffords	Byrd	Moseley-Braun	Craig	Nickles			
Lugar	Daschle	Moynihan	D'Amato	Pressler			
Mack	Dodd	Murray	Dole	Roth			
Snowe	Feingold	Nunn	Domenici	Santorum			
	Feinstein	Pell	Faircloth	Shelby			
	Ford	Pryor	Gorton	Simpson			
	Glenn	Robb	Gramm	Smith			
	Graham	Rockefeller	Grams	Specter			
	Harkin	Sarbanes	Grassley	Stevens			
	Heflin	Simon	Gregg	Thomas			
	Inouye	Wellstone	Helms	Thompson			
		Wyden	Hutchison	Thurmond			
				Warner			

migration situation that substantially exceeded, or would substantially exceed, the United States' capacity to use normal inspection and examination procedures for determining their eligibility to enter the United States. Prompt administrative review would be provided for any person who asserted that he or she had been admitted for permanent residence. Anyone who sought asylum would be referred to an asylum officer to determine if the alien had a credible fear of persecution. If the officer decided that the alien did not have such a credible fear, the alien would be permitted a single level of administrative appellate review.

Those favoring the amendment contended:

The summary exclusion provisions in this bill are extreme. When an alien arrives without documents or with false documents, under the terms of this bill he or she may be denied entry. If such an alien asks for asylum, he or she will be referred to an asylum officer. If that officer does not believe that the alien has a credible fear of persecution, and if a supervisor agrees, then the alien will be deported. No type of judicial review, no right to any type of representation, no opportunity to call witnesses, and no other standard due process rights will be given. People who are fleeing torture, imprisonment, and execution will be sent back after little more than an interview. These bill provisions will literally put the lives of refugees into the hands of INS bureaucrats.

Throughout U.S. history, it has been common for refugees to arrive without documents or with improper documentation. When people are fleeing for their lives, it is obviously often not possible or advisable to travel under their own identities. Until recently, this fact was abused by illegal immigrants who pretended to be refugees. They would travel under false documents or destroy their real documents en route to the United States, and when they arrived, they would claim they were fleeing persecution. Upon arrival, they would be given green cards and dates for appearing before asylum officers. Being illegal immigrants, they would never appear. The INS has already solved this problem, though. It changed its procedures in 1994. Green cards are no longer issued, and aliens are held in detention until their hearings. As a result, the number of asylum claims dropped from 126,000 in 1994 to only 53,000 in 1995. Out of those 53,000, only 6,000 were granted asylum--the rest were returned. Further, the INS reports that it now completes 84 percent of asylum claims within 60 days of filing, and 98 percent of them within 180 days. The problem has definitely been solved without denying anyone the right to judicial review.

We urge our colleagues to consider how this bill would have affected the on-going Kasinga case if it had been in effect a few months ago. Ms. Kasinga, a native of Togo, recently fled to the United States to avoid female genital mutilation (which is a common practice in two dozen African countries). She traveled to the United States under false documents in order to escape. She asked for asylum, and was denied, but she then had a right to a hearing. She lost in that hearing, but she currently has an appeal before the Board of Immigration Appeals. We are hopeful that she will eventually win this case. However, if this bill had been in effect a few months ago, her rights would have stopped as soon as a supervisor agreed with an asylum officer that she did not have a credible fear of persecution. She would have been sent back to Togo months ago without any judicial review.

The Simon amendment would strike most of the sections on fraudulent documents and the limits on judicial review. The only section it would retain would be the limits on processing in those cases when huge numbers of immigrants overwhelm the INS's ability to process them for entry. That problem still exists, and should be addressed. However, the Simon amendment would modify it to allow aliens who are denied asylum at least some judicial review.

In summary, the provisions that would be stricken related to document fraud are an overreaction to a problem that has already been solved. They would result in the deportation of people with legitimate asylum claims without those people being given even the most minimal of rights to present their claims in court. We think such a result is extreme, and thus support the Simon amendment.

Those opposing the amendment contended:

The Simon amendment would strike three reforms from this bill. First, it would strike a new ground of exclusion--the use of fraudulent documents in an attempt to enter the country. We do not think that ground should be stricken. Somebody who is deliberately breaking the law in an effort to gain admittance to America should automatically be excluded. The only exception should be for those people who are seeking asylum, and who are understandably entering under false documents in order to escape detection from their persecutors whom they are fleeing. This bill will make an exception for such asylees. The second reform is to allow the summary exclusion of people who try to enter the country by breaking the law by using fraudulent documents. People who are breaking the law who are not in any way allowed to be in the United States should not be allowed to remain in the country for years on end by using, or more accurately misusing, various administrative and judicial proceedings and appeals. They should just be sent back as soon as they arrive.

Interestingly, though our colleagues saw fit to propose striking these first two reforms from the bill, they have not spent any time explaining why. Instead, they have spoken about the third reform that would be stricken by the Simon amendment, which is the expedited procedure that will be used for processing asylum claims. Our colleagues tell us that the problem has been solved, but the INS still has a backlog of more than 400,000 asylum claims to process, and tens of thousands of spurious new claims are still filed each year. The bill reform will speed the process by using specially trained INS officers to weed out the spurious claims at the beginning of the process. These officers will not decide if a claim is valid--they will only determine if it is credible. If a claim is

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credible, then all the existing procedural protections will still apply. We see not valid reason to drag every spurious, outlandish claim through years of administrative and judicial appeals when the eventual outcome of most cases is patently obvious from the moment that the claims are first made.

An attempt by some Senators has been made to link this asylum procedure reform with the barbaric practice of female genital mutilation. All of us have heard of the Kasinga asylum case, and we have all had the same instant reaction that surely asylum should be granted. However, for Senators who assume that an asylum officer will not arrive at the same conclusion as a court, we note that so far the courts have agreed with the immigration officer (who was not a specially trained asylum officer) who said that Ms. Kasinga does not have a valid asylum case. This seemingly nonsensical conclusion is based on cultural differences. Female genital mutilation is accepted and supported by men and women alike throughout much of Africa. If it becomes standard practice to grant asylum for women fleeing genital mutilation, it will likely become a common means for Africans to emigrate to America who could not otherwise gain entry. Canada's experience may prove illustrative. Three years ago it decided to grant asylum to women fleeing this practice. Once those women have gained entry, they have sponsored their relatives, setting up chain migrations. These families, once they have made it to Canada, have continued to practice female genital mutilation. Instead of importing people who are fleeing genital mutilation, Canada has unwittingly imported the practice.

We urge Senators not to get caught up in the emotion of this debate, but to instead consider on their merits the provisions that the Simon amendment would strike. On their merits, those provisions are straightforward, commonsense proposals to stop people instantly who try to enter the country illegally by using fraudulent documents. We support those provisions, and thus urge the defeat of this amendment.